

## **803 KAR 1:035. Hearing procedure.**

RELATES TO: KRS 13B, 337.295, 337.310

STATUTORY AUTHORITY: KRS 13B.170, 337.295, 337.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B, regarding administrative hearings. KRS 337.310 authorizes appeal of orders and decisions issued or made by the Commissioner of Workplace Standards, Labor Cabinet under KRS 337.020 to 337.405. KRS 337.295 authorizes the commissioner to promulgate administrative regulations pertaining to these statutes. This administrative regulation establishes the procedure to be followed by the Commissioner of Workplace Standards in deciding the questions of fact as required by the statute and to insure that the parties to proceedings concerning alleged violations of the statutes are afforded a fair opportunity to present any and all relevant proof on the matter.

Section 1. Procedure. (1) The Commissioner of Workplace Standards, or his authorized agent, shall investigate any complaint or routinely inspect records relating to an alleged violation of KRS 337.020 to 337.405.

(2)(a) The commissioner, or his authorized agent, shall evaluate all proof submitted and render tentative findings of fact if:

- 1.a. A settlement cannot be reached between the employer and employee; and
- b. An investigation reveals that questions of fact are in issue; or
2. The complaint or routine inspection gives the Commissioner of Workplace Standards, or his authorized agent, good cause to believe that factual issues need to be resolved.

(b) The proof to be evaluated by the commissioner, or his authorized agent, shall include:

1. The findings of the investigator;
2. Sworn affidavits;
3. Contractual agreements;
4. Payroll records; and
5. Other evidence relating to an alleged violation of KRS 337.020 to 337.405.

(c) The commissioner shall cause the tentative findings of fact to be served upon the parties.

(d)1. Service shall be accomplished by mailing a copy of the tentative findings of fact to the party's registered agent for service of process via certified mail.

2. If the party does not have a registered agent for service of process, service of the tentative findings shall be accomplished by certified mail to the party's last known physical address or by personal service.

(3)(a) The party suffering adversely from these tentative findings of facts shall have fifteen (15) days from receipt of service of the findings to submit a petition for a fact-finding hearing to the commissioner.

(b) The petition shall contain:

1. A brief statement of the petitioner's grounds for believing the tentative findings of fact to be in error; and
2. Any affirmative defense to the findings.

(c) Failure to state the grounds or defenses shall be cause for the commissioner, or his authorized agent, to deny the petitioner a hearing.

(d) If commissioner, or his authorized agent, approves the hearing petition, then a hearing date shall be set in order to make final findings of fact concerning the alleged statutory violation.

- (e) The parties shall be notified of the hearing date in accordance with KRS 13B.050.
- (f) If a petition for a fact-finding hearing is not sought or granted, then the tentative findings of fact shall become a final order fifteen (15) days after receipt of service of the tentative order.
- (4) The commissioner, or his authorized agent, shall conduct the hearing:
  - (a) In the Frankfort office of the Labor Cabinet; or
  - (b) At a site in the Commonwealth mutually agreed upon by all the parties and the commissioner, or his authorized agent.
- (5) In accordance with KRS 337.310, the hearings shall comply with KRS Chapter 13B.
- (6) The commissioner, or his authorized agent, shall follow the provisions of KRS 13B.120 in making a decision concerning a final order. (4 Ky.R. 219; eff. 1-4-78; Am. 5 Ky.R. 143; eff. 10-4-78; 6 Ky.R. 693; 7 Ky.R. 299; eff. 9-3-80; 21 Ky.R. 568; 1051; eff. 10-10-94; TAm eff. 8-9-2007; 41 Ky.R. 2045; 2550; eff. 7-6-2015.)